(1)

Supreme Court, U.S.
FILED

031492 APR 21 2004

No._____

IN THE SUPREME COURT OF THE UNITED STATES

SALVATORE CORAGGIOSO,
Petitioner,

v.

JOHN ASHCROFT, ATTORNEY GENERAL, and UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) DISTRICT DIRECTOR,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For The Third Circuit
(3rd Circuit No. 03-1075)
Before: Scirica, Chief Judge, Nygaard and Ambro, Circuit Judges

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether an immigrant visa may be issued, or adjustment of status granted, to an eligible qualified applicant beyond the fiscal year in which application was made in order to preserve eligibility under the Diversity Visa Lottery Program, and to count the visa number against the worldwide level for the fiscal year in which the individual was selected.

(2) Whether the Immigration and Naturalization Service (INS), now known as the United States Citizenship and Immigration Services (USCIS) had an affirmative duty to adjudicate the timely-filed adjustment of status application in accordance with the published regulations governing the 1998 Diversity Lottery Program, recognizing the legislative intent is to issue all available visas to those selected and failure to do so during the fiscal year violates due process and penalizes one who is legally entitled to lawful permanent resident status.

(3) Whether the United States Board of Immigration Appeals abused its discretion by affirming, without opinion, the decision below thus violating a basic principle of administrative law, the requirement that agencies provide reasoned bases for their decisions which will allow circuit courts to determine if the reviewing agency actually performed its job according to published regulations.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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CITATION OF THE OFFICIAL AND UNOFFICIAL REPORTS

The order entered by the Circuit Court was published in 355 F.3d 730 (3rd Cir. 2004).

STATEMENT OF JURISDICTION

The Circuit Court issued an opinion denying the petition for review on January 23, 2004 affirming the order of removal entered by the immigration judge which was subsequently affirmed by the United States Board of Immigration Appeals. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1254 (1).

STATEMENT OF CASE

Petitioner, Salvatore Coraggioso, a 24 year old male born in Italy on October 22, 1979, entered the United States with his parents on June 13, 1984 as a 4 year old child. The petitioner has resided continuously in this country and is now fully assimilated into the American culture, having resided in the United States for all but four years of his life.

The petitioner, who was then under the age of 21, was included on the 1998 Diversity Visa (DV) Lottery and adjustment of status applications submitted by his parents as the family was notified that they were winners of the 1998 DV Program. In 1990, Congress promulgated a Diversity Immigrant Visa Program under which a limited number of immigrant visas were made available to individuals from countries with historically low admissions into the United States. 8 U.S.C. § 1153(c). A diversity visa enables the recipient to move to or remain in the United States in order to adjust status to permanent

resident. The law presently requires that "DV winners" file their applications and be approved during the fiscal year in which they file.

In the instant matter, the petitioner's parents, assisted by a local Catholic Family Services organization, submitted all applications in a timely fashion with the appropriate filing fees. The money orders were deposited by the Immigration and Naturalization Service (INS or Service) and the family maintained meticulous records of all monies paid. The petitioner and his parents were awaiting final clearance when they received a letter from the INS District Director, dated January 28, 1999, informing them that they were no longer eligible to receive a visa. The petitioner's application was denied as a "matter of law" as the family was simply informed that the 1998 DV Lottery Program had ended.

The petitioner was subsequently served with a Notice to Appear on August 10, 1999 and was charged with being subject to removal as being present in the United States without being admitted or paroled, pursuant to § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or Act). The petitioner was placed in proceedings before an Immigration Judge within the jurisdiction of the Newark, New Jersey Executive Office for Immigration Review. On September 14, 2000, the petitioner was ordered removed from the United States to his native Italy as the Immigration Judge denied petitioner's motion to terminate proceedings and determined that the petitioner had no basis for relief under the current Immigration laws.

A timely appeal followed to the United States Board of Immigration Appeals (BIA or Board). On December 10, 2002, the Board affirmed, without opinion, the decision of the Immigration Judge. A petition for review was then filed with the United States Court of

Appeals for the Third Circuit and was docketed on January 9, 2003. The Circuit Court had jurisdiction pursuant to 8 U.S.C. § 1252(b)(2) which provides for the petition for review to be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. Briefs were submitted to the Court and oral argument was presented on October 28, 2003. The Circuit Court, expressing regret, denied the petition for review on January 23, 2004 and affirmed the removal order. This petition followed.

ARGUMENT

I. PETITIONER IS NOW BEING PENALIZED DUE TO THE AFFIRMATIVE MISCONDUCT BY THE FORMER IMMIGRATION AND NATURALIZATION SERVICE IN FAILING TO ADJUDICATE PETITIONER'S ADJUSTMENT OF STATUS APPLICATION IN VIOLATION OF THE PUBLISHED REGULATIONS GOVERNING THE 1998 DIVERSITY VISA LOTTERY PROGRAM.

In 1990, Congress promulgated a Diversity Immigrant Visa Program under which a limited number of immigrant visas were made available to individuals from countries with historically low immigration admissions into the United States. 8 U.S.C. § 1153(c). Under the DV program, 55,000 annual immigrant visas are allotted to qualified foreign nationals. The 55,000 number includes family members, specifically the spouse and children under the age of 21, of the principal diversity immigrant. 8 U.S.C. § 1153(d). Unlike the more common bases for obtaining permanent residence, the alien seeking a diversity immigrant visa need not be sponsored by a relative or employer. Rather the applicant completes and files an application with the State Department which in turn randomly selects those aliens who will be eligible to apply for an immigrant visa under the DV Program. See 22 C.F.R. § 42.33(c). It is important to note that the application filed with the State Department places the alien in a pool of potential diversity immigrants, and is not the final step to obtain permanent resident status under the DV Program. It is

better described as a preliminary phase should the alien be selected for participation in the DV Program. It is then at that latter stage that the alien can apply for permanent resident status. 8 U.S.C. § 1255(a). Selection as a "lottery winner" does not ensure that an applicant will receive a diversity visa as the total number of lottery winners exceeds the number of diversity visas allowed under the program. See 8 U.S.C. § 1202.

The State Department has issued rules of conduct for the diversity program. To be eligible, the alien must be a native of a low-admission foreign state and must have at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, have two years of work experience in an occupation requiring at least two years training or experience. 8 U.S.C. § 1153(c)(2)(B). The statute provides a formula through which the Attorney General is to determine which countries can participate in the diversity immigration program. (It is also noted that aliens who are natives of low admission states are eligible for selection even if they are currently out of status in this country). The Attorney General must determine the population of each region of the world and use the totals to determine apportionment of the world-wide limitation of 55,000 among the regions. 8 U.S.C. § 1153(c)(1). The list of countries participating in the diversity program could change from year to year, depending on the Attorney General's determination for that year regarding a country's usage of immigrant visas over the preceding five years. Id.

Once an applicant is selected, a notice of selection is sent by the National Visa Center to the applicant. The National Visa Center will continue to process the case until those selected are instructed to make formal application for a DV visa at a United States consular office

abroad. Applicants in the United States who meet the requirements, have the option of applying for adjustment of status. 8 U.S.C. § 1255(a). Persons seeking adjustment of status must pay substantial fees apart from the normal filing fees. The Attorney General, at his discretion, may adjust an applicant's status to that of an alien lawfully admitted for permanent residence if the alien makes an application for same, is eligible to receive an immigrant visa, and a visa number is immediately available to the alien at the time the application is filed. Ibid.

Typically, the State Department selects about 100,000 persons for participation in each year's DV Program to ensure that all DV numbers are used for the fiscal year in question. Under the State Department procedure, visas will be issued each month, according to rank order, to those applicants who are ready for visa issuance that month. It is noted that an alien with a lower rank may still obtain a visa before applicants with a higher ranking if the applicant with a lower ranking is ready for visa issuance during that particular month and if the person with the higher ranking is unprepared. Once all of the fiscal year visas are issued, the program for that year will end. See 22 C.F.R. § 42.33(c).

The regulations governing the DV Program stipulate that there is no carry-over of benefit into another year for persons who are selected but who do not obtain visas during the fiscal year they were selected. See 8 U.S.C. § 1154 (a)(1)(I)(ii)(II). Approved diversity visa petitions are valid only until the midnight of the last day of the fiscal year for which the application was submitted. It is imperative that selected applicants be prepared to act promptly on their cases once notification of their selection is received from the National Visa Center. It is noted in the *Immigration Procedures Handbook*, Chapter 11A-15, 1998 Edition, that adjustment of status processing

backlogs have grown substantially under the new law and is, in large part, attributable to the new procedures governing FBI clearances. To address this situation, the Service has recently indicated that it will request expedited fingerprint processing as these cases must be closed out by the end of the fiscal year.

The instant petitioner's parents were notified that they had been selected to participate in the 1998 DV Lottery Program. The family, residing in the United States, submitted their application for adjustment of status and included their son, the instant petitioner, in this matter. All appropriate filing fees and penalties were paid by petitioner's family in a very timely fashion. Unfortunately, due to the backlog of adjustment of status applications, the petitioner was notified that the adjustment of status application was being denied as a "matter of law." Further, since the fiscal year had ended, the petitioner was advised that there was no recourse as there is no carry-over into the next year's diversity program. The petitioner and his family were devastated. They, after all, had done everything right. Their applications and filing fees were timely submitted. They were awaiting final security clearance. However, rather than the news that he could adjust status to lawful permanent resident, the petitioner was advised that he was in the United States without authorization and he was placed in proceedings in Immigrant Court. The petitioner could not understand what had happened and he and his parents did not know where to turn. Moreover, the petitioner's parents had another child, a daughter born in the United States some seventeen years ago. The family is truly in turmoil and is being penalized for the inaction by the Service in adjudicating their adjustment of status applications.

The more troubling aspect of this case is the

knowledge that under the 1998 fiscal year DV Program, only 51, 565 of the 55,000 diversity visas were actually issued, thereby leaving almost 3,500 authorized diversity visas unused. See Nyaga v. Ashcroft, 323 F.3d 906 (11th Cir. 2003); see also Iddir, et al v. INS, 301 F.3d 492, 494 (7th Cir. 2002). Therefore, visa numbers were available to the instant petitioner and his family and, as eligible immigrants who were in compliance with the statutory requirements, would have faced no impediment to a status adjustment. Throughout the applicable statute, Congress chose to employ authoritative language that affirmatively directs action. The term "shall" pervades § 1153(c) and is repeated eleven times therein, stating that the INS, the Attorney General, or the Secretary of State shall perform certain functions. See 8 U.S.C. §1153(c)(1)(A). This section also contains clear language directing the INS to distribute all available diversity immigrant visas for a given fiscal year. Most notably, 8 U.S.C. § 1153 (c)(1)(E)(iv) gives the Secretary of State the command to issue excess diversity visas from one region of the country to natives of other regions in proportion to the percentages specified in clauses (ii) and (iii).

By its plain language, 8 U.S.C. § 1153(c)(1)(E)(iv) directs the Secretary of State (and the INS in the course of processing adjustment of status applications) to distribute all available diversity immigrant visas each year. The mandate of Congress is clear that all of the diversity immigrant visas be distributed to eligible applicants. Circuit Judge Barkett, in his dissenting opinion, remarks on the "intractable conundrum" due to the unilateral failure of the INS to comply with the directives of the Immigration and Nationality Act. Nyaga v. Ashcroft, supra., dissenting opinion. Judge Barkett further remarked that such a result is particularly offensive because it is clear that Congress expected the INS to

perform the ministerial duties required by the DV Program and to distribute the allotted visas within the fiscal year.

A corollary can be found between the instant matter and Paunescu v. INS, 76 F. Supp.2d 896 (N.D. Ill. 1999). The Paunescus brought action to compel the INS to process their application for adjustment of status pursuant to the Diversity Immigrant Visa Program. Paunescu had to submit fingerprints on three separate occasions and had forwarded follow-up requests to the INS. By the time the third set of fingerprints were taken, the fiscal year had ended. The Court in Paunescu determined that the defendants had a non-discretionary duty to issue a decision on the plaintiffs' application within a reasonable period of timed. Paunescu at 901, citing Yu v. Brown, 36 F. Supp.2d 922, 931 (D.N.M. 1999). The Paunescu Court rejected defendant's arguments that the plaintiffs have an adequate remedy which is to wait until the government institutes removal proceedings and raise their claims before the Immigration Judge. The Court reasoned that this may be the only remedy for an alien who is denied an adjustment of status. However, the failure to adjudicate an application for adjustment of status is different from the denial of the application. Ibid. The Court in Paunescu found that "plaintiffs were the victims of a bureaucratic nightmare" and "the plaintiffs should not be penalized for the government's misfeasance." Id. at 902.

Even more analogous to the instant matter is the notation that other courts have ordered the INS and the State Department to procure visa numbers after the end of a fiscal year. Id. at 903, citing Marcetic v. INS, 1998 WL 173129 (N.D. Ill. April 6. 1998). The Paunescu Court held that the defendants owe plaintiffs a non-discretionary duty to complete the processing of their application and

that the application would have been completed and they would have received their visas but for the government's error. Ibid. The Court ordered the defendant to process plaintiffs' application and to grant plaintiffs all relief to which they would have been entitled had the defendants processed their application in a timely fashion.

Such is the situation in the instant case with the only difference that the instant petitioner had not been fingerprinted three times. The petitioner's application for adjustment of status should have been approved but for the inaction of the INS. During proceedings, the Assistant District Counsel could not dispute the facts as presented nor could he dispute that there were no visa numbers available while the petitioner's application was pending before the Service.

The INS may be estopped from denying an application for adjustment of status if it engages in affirmative misconduct, such as delaying action on an application until such time as a visa is no longer available to an applicant. Reid v. INS, 897 F. Supp. 798 (S.D.N.Y. 1995). As the Court noted in Iddir v. INS, supra. at 495, the INS is no stranger to administrative problems and, in the case of Iddir, waited until after the prescribed time period to hear the plaintiffs' petitions for adjustment of status. Then, the INS summarily rejected the petitions, not on the merits, but on the grounds that the time within which the petitions had to be heard expired. Ibid. The Iddir Court notes that DV Program applicants have time-sensitive applications that need to be processed expeditiously and yet the INS specifically told these applicants not to contact the INS because doing so would delay their applications further. Id. at 496. The Court noted that despite the time- sensitive nature of the DV applications, the INS did not take a single step toward processing the applications and, in one situation, may

have even lost the application for a period of time. Ibid.

Therefore, based on the decision of the Court in Marcetic v. INS, supra., there is precedence for ordering the INS and the State Department to procure a visa number after the end of the fiscal year. As such, the instant petitioner respectfully requests that an order be issued to procure visa numbers for he and his parents. The petitioner was informed by the INS District Director that he forfeited his opportunity to adjust status as a matter of law and because the fiscal year had ended. The petitioner contends this "forfeited" opportunity occurred through no fault of his own but as a direct result of the misfeasance and willful misconduct on the part of the INS for failing to adjudicate the time-sensitive adjustment of status application prior to the end of the 1998 fiscal year. The requested remedy is the only one which would yield the result to which the petitioner was originally entitled and for which Congress legislated.

The Circuit Court in the instant matter held that although the affirmative language used throughout 8 U.S.C. section 1153 creates a duty to administer the DV Program, it does not extend the statutorily-limited period of eligibility for a diversity visa. Coraggioso v. Ashcroft, 355 F.3d 730, 734 (3rd Cir. 2004), citing Nyaga, supra. at 914. The Court concluded that, in the current circumstances, the language Congress used precludes the INS from issuing a visa pursuant to the DV Program for a given fiscal year upon the expiration of that fiscal year. Ibid. [1] The Court concluded with regret that the

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[1] The petitioner notes the recent introduction of S. 2089 by Senator Saxby Chambliss (R-GA), chair of the Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship, for introducing legislation that would redress a critical problem in the DV Program for fiscal years 1998-2003. The bill authorizes individuals, who were otherwise eligible for diversity visas, to be eligible beyond the fiscal year in which they

petitioner's petition for review must be denied and affirmed the order of removal. The Court noted the equities of the situation, the length of residence in the United States, having committed no crimes, and petitioner not being a burden on society. The Court ended by noting that "absent such relief [a private bill], Coraggioso will be forced to leave behind his family, friends, and the only life he can remember." Id. at 735.

II. THE BOARD OF IMMIGRATION APPEALS ABUSED ITS DISCRETION BY AFFIRMING, WITHOUT OPINION, THE DECISION BELOW, AND NOT PROVIDING A REASONED BASIS FOR ITS DECISION, THUS VIOLATING A BASIC PRINCIPLE OF ADMINISTRATIVE LAW.

The petitioner contends that the Board abused its discretion by affirming, without opinion, the decision of the Immigration Judge. The use of affirmance without opinion (AWO)was misapplied in the instant matter as the decision of the Judge was not harmless error. The inappropriate use of the AWO denied petitioner due process as it is unclear if all the evidence submitted was considered by the agency which has a duty to respond to arguments made therein. Due process requires that a decision-maker actually consider the evidence and arguments that a party presents. De La Llana-Castellon v.

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applied by following procedures which shall be published by the Department of Homeland Security, the Secretary of State, or Attorney General, to reopen their cases and continue processing the application as long as diversity visa for the fiscal year in which they file remain available.

INS, 16 F.3d 1093, 1096 (10th Cir. 1994).

Before affirming an Immigration Judge's decision without opinion, the Board Member must determine that the case satisfies the criteria set forth in 8 C.F.R. section 3.1(a)(7)(ii) (after September 25, 2002, 8 C.F.R. section 3.1(e)(4)(i)). Specifically, the case must satisfy both of the requirements listed in sections (a) and (b) and one of the two alternate requirements listed in section (c), namely:

> a. the result reached by the Immigration Judge must be correct; and
>
> b. any errors in the decision below must be harmless or nonmaterial; and either
>
> c. (i)the issues on appeal must be squarely controlled by existing Board or federal court precedent and cannot involve the application of precedent to a novel fact situation; or
>
> (ii)the factual and legal questions raised on appeal must be not so substantial that the case warrants the issuance of a written opinion in the case.

The three-sentence AWO decision does not contain any reasons or explanations as to why the decision was reached. In the Federal Register announcement of the current AWO regulation, the Department of Justice acknowledged that appellants in removal proceedings have a "right to a reasoned administrative decision." Executive Office of Immigration Review; Board of Immigration Appeals: Streamlining, 64FR 56135, 56137 (1999). The Board must not only engage in a careful, individualized review of the evidence, but also must consider the issues raised and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted.

Cortes-Castillo v. INS, 997 F.2d 1199 (7th Cir. 1993), quoting Vergara-Molina v. INS, 956 F.2d 682, 685 (7th Cir. 1992).

Therefore, the instant petitioner asserts that his due process rights were violated by the Board when it affirmed, without opinion, the decision below. The petitioner maintains his case is not governed by the new regulations for an affirmance without opinion decision as the determination of the Immigration Judge was in error. The error committed cannot be considered harmless or immaterial.

CONCLUSION

Respectfully, the petitioner requests this Court direct the USCIS to issue a visa to the petitioner and his parents in order to remedy the injustice caused by the government's failure to follow its own published regulations governing the DV Lottery Program. Based on the foregoing, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

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PRECEDENTIAL

Filed January 29, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1075

SALVATORE CORAGGIOSO
Petitioner

v.

JOHN ASHCROFT, Attorney General of the United States,
Respondent

On Appeal from an Order Entered in
The Board of Immigration Appeals
(No. A77 035 208)

Argued October 28, 2003
Before: SCIRICA, *Chief Judge*, NYGAARD and
AMBRO, *Circuit Judges*

(Opinion filed January 23, 2004)

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ORDER AMENDING SLIPOPINION

AMBRO, *Circuit Judge:*

It is now ordered that the published Opinion the above case filed January 23, 2004, be amended as follows:

On page 6 of the slip opinion in the first full paragraph ("In interpreting the scope of the DV Program..."), the penultimate sentence (which begins "If Congress had used...") is changed to delete the word "been", such that the sentence reads, "If Congress had used different language, our analysis may be different."

By the Court,
/s/ Thomas L. Ambro, Circuit Judge

Dated: January 29, 2004

A True Copy:
Teste:
Clerk of the United States Court of Appeals for the Third Circuit

PRECEDENTIAL

Filed January 23, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1075

SALVATORE CORAGGIOSO
Petitioner

v.

JOHN ASHCROFT, Attorney General of the United States,
Respondent

Petition for Review of an Order of
The Board of Immigration Appeals
(No. A77 035 208)

Argued October 28, 2003
Before: SCIRICA, Chief Judge, NYGAARD and
AMBRO, Circuit Judges
(Filed: January 23, 2004)

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OPINION OF THE COURT

AMBRO, Circuit Judge:

Salvatore Coraggioso was born in Italy and entered the United States with his parents in 1984 at the age of four. Since then he has resided with his family in the United States, where he has been educated and employed. He has never been arrested. What reads like an immigrant's dream nonetheless is becoming a nightmare.

The hitch is that Coraggioso was not admitted formally to the United States. As a result, in 1999 he was served with notice of removal proceedings. He conceded that he was removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being properly admitted. Before the Immigration Judge ("IJ"), however, Coraggioso argued that removal proceedings should be terminated and relief be accorded under the Diversity Immigrant Visa Program ("DV

Program") established by Congress. Concluding he was powerless to grant relief, the IJ issued an oral decision denying Coraggioso's motion to terminate removal proceedings and ordered him removed to Italy. In December 2002, the Board of Immigration Appeals ("BIA") affirmed the IJ's decision without opinion. A timely appeal followed. We have jurisdiction to review final orders of removal pursuant to 8 U.S.C. § 1252(a), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

Application of the statutory language exacts an extreme hardship on Coraggioso and his family. But in the absence of a patent absurdity, we must interpret a statute according to its plain meaning. Here the statute, with perhaps unintended and lamentable consequences, is not absurd. Coraggioso's petition for review is therefore denied.

I.

Congress instituted the DV Program in 1990. Each year this program provides visas to individuals from countries whith historically low immigration admissions to the United States. See Generally 8 U.S.C. § 1153(c).[1] A total of 55,000 visas are allotted to the program annually. 8 U.S.C. § 1151(e).[2] A diversity visa (an immigrant visa issued through the DV Program) qualifies an individual for permanent resident status. See 8 U.S.C. § 1255(a). If an

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[1] The individual eligibility requirements for the DV Program and the procedures for allocating visas to specific regions are not relevant to this case.

[2] Passed by Congress in 1997, the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, 111 Stat. 2193 (1997) (codified as amended in scattered sections of 8 U.S.C.), stipulates that up to 5,000 of 55,000 annually allotted diversity visas will be made available for use under the NACARA program. The reduction of visas to 50,000 began with the 2000 DV Program and remains in effect. It does not affect this case, the facts of which predate 2000.

alien qualifies to receive a visa under the program, that person's spouse and children under the age of twenty-one are entitled to visas as well. 8 U.S.C. § 1153(d).

A person seeking a visa, through the DV Program files a petition with the State Department. In turn, it randomly selects the individuals who are eligible to participate in the Program. Such a person is considered a "lottery winner." Selection as a lottery winner, however, does not ensure that an applicant will receive a visa. The total number of lottery winners exceeds the number of diversity visas available (approximately 100,000 winners for the 55,000 visas).[3] Thus, a lottery winner obtains only the right to apply to receive a visa through the DV Program.

Once an individual is selected to participate in the DV Program, s/he must submit numerous documents and undergo an extensive background review. Lottery winners from abroad submit application at a United States consular office. Those residing in the United States, however, may apply to the INS for an adjustment of status under 8 U.S.C. § 1255(a). This procedure allows a lottery winner to receive a diversity visa without returning to his or her native country. A person is eligible for the DV Program for a single fiscal year only.[4] Those not receiving visas must, with Sisyphean frustration, go back to the starting line and reapply to the lottery.

Coraggioso's parents were selected in the 1998 lottery and participated in the 1998 DV Program.[5] Coraggioso (then under twenty-one years old) was included in the diversity visa and adjustment of status application submitted by his

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[3] The excess number of petitions selected are "to ensure, to the extent possible, usage of all immigrant visas authorized." 22 C.F.R. § 42.33(c).

[4] For example, fiscal year 1998 for the DV Program began October 1, 1997 and ended September 30, 1998.

[5] The record fails to specify whose name in the lottery was drawn – Coraggioso's father, his mother of both of his parents jointly.

parents. He alleges his parents promptly submitted all required documents, paid all necessary fees, qualified for the diversity visas and were merely awaiting notification from the INS that their application had been approved.[6] Sometime in January 1999, though, his parents received a letter stating their application had been denied, not on their merits, but because the fiscal year had ended. In other words, the INS had not finished processing the application by the end of the fiscal year. Sadly, diversity visas were available for Coraggioso and his family had the INS timely dealt with their application. Only 51,565 of the 55,000 diversity visas were actually issued for fiscal year 1998.

II.

On appeal, Coraggioso argues that his removal proceedings should have been terminated due to the INS's failure to adjudicate his parents' adjustment of status application under the DV Program.[7] In addition, Coraggioso now requests that we order visa numbers be procured for him and his parents.

We review the decision of the IJ as adopted by the BIA. *Gao v. Ashcroft*, 299 F.3d 266, 271 (3d Cir. 2002)(citation omitted). Whether the IJ erred in interpreting the statutory provisions of the DV Program is a question of law subject to plenary review. See *Valansi v. Ashcroft*, 278

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[6] The record is devoid of any documentary evidence of Coraggioso's parents' participation in the 1998 DV Program. Any factual representations have been made by Coraggioso's counsel orally or in writing. The INS, however, has not challenged these factual allegations or presented any contrary evidence. For the purposes of this appeal, therefore, we accept these allegations as true.

[7] Coraggioso also appeals the BIA's affirmance of the IJ's decision without opinion. This issue is identical to the one decided in *Dia v. Ashcroft*, 2003 U.S. App. LEXIS 25901, 2003 WL 22998113, F.3d (3d Cir. Dec. 22, 2003)(*en banc*). As dictated by *Dia*, we must conclude this BIA's actions in this case were proper.

F.3d 203, 207 (3d Cir. 2002). However, the BIA's (and hence the IJ's) interpretation of the INA is subject to established principles of deference. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999). "[I]f the intent of Congress is clear...the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.*

III.

As the IJ correctly noted, Coraggioso's status cannot be adjusted in absence of an approved visa petition or evidence that an immigrant visa is available. 8 U.S.C. § 1255(a). Thus the only issue we need decide is whether the DV Program allows the issuance of a diversity visa after the end of a given fiscal year. In other words, are Coraggioso and his parents still eligible to receive diversity visas after September 30, 1998 (the end of the 1998 fiscal year DV Program)? If so, we may grant relief. If not, relief is foreclosed.

In interpreting the scope of the DV Program, we must begin with the statutory language. *Hughes Aircrarft Co. v. Jacobson*, 525 U.S. 432, 438 (1999). According to long-standing principle, ambiguities are resolved in favor of aliens. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987). But where the statutory language provides a clear answer, our inquiry usually ends. *Hughes Aircraft Co.*, 525 U.S. at 438. The provision that dictates the result we reach today is 8 U.S.C. § 1154(a)(1)(I)(ii)(II). It states: "Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific year for which they were

selected." *Id.* The phrase "only through the end of the specific year" unambiguously indicates Congress's intent ot impose a time deadline on an applicant's eligibility to receive a visa. If Congress had used different language, our analysis may be been different. We are compelled, however, to interpret the statute as written.

Despite the clear mandate in 8 U.S.C. § 1154(a)(1)(I)(ii)(II), Coraggioso argues that we should still interpret the DV Program to grant the relief he requests. Congress chose to use affirmative language throughout §1153(c). See 8 U.S.C. § 1153(c)(1) ("diversity immigrants shall be allotted visas"), (c)(1)(A) ("[t]he Attorney General shall determine"), (c)(1)(B)(i) ("[t]he Attorney General shall identify"), (c)(1)(B)(ii) ([t]he Attorney General shall identify"), (c)(1)(C) ("[t]he Attorney General shall determine"), (c)(1)(D) ("[t]he Attorney General shall determine'), (c)(1)(E)(iv) ("excess visa numbers shall be made available"). Hence the Attorney General and the INS have an affirmative duty to administer the DV Program in a timely manner. Further, § 1153(c)(1)(E)(iv) states:

> If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the *excess visa numbers shall be made available* to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(Emphasis added.) This language could be interpreted as providing a clear directive that the INS distribute all 55,000 diversity visas for a fiscal year. See *Nyaga v. Ashcroft*, 323 F.3d 906, 918 (11th Cir. 2003) (Barkett, J., dissenting).

According to Coraggioso, these provisions of the DV Program conflict with the time limitation of 8 U.S.C. §1154(a)(1)(I)(ii)(II), resulting in an absurdity. It is well recognized that even clear statutory language will not be given effect if to do so is absurd. *Cardoza-Fonesca*, 480 U.S. at 452 (Scalia, J., concurring).

Ultimately, however, we must heed the jurisprudential tenet not to create ambiguity in a statutory provision (and not to create a conflict between two sections of a statute) where none reasonably exists. The affirmative language used throughout 8 U.S.C. § 1153 creates a duty to administer the DV Program, but it does not extend the statutorily-limited period of eligibility for a diversity visa. *Nyaga*, 323 F.3d at 914. Also, we interpret § 1153(c)(1)(E)(iv) to mean that, time permitting, the INS must make available the excess visa numbers from one region to applicants from another region. But these provisions in 8 U.S.C. § 1153(c) in no way conflict with the requirement in 8 U.S.C. § 1154(a)(1)(I)(ii)(II) that all visas for a given year's DV Program must be issued by the end of that fiscal year. We therefore join the Seventh and Eleventh Circuits in concluding that, in the current circumstances, the language Congress used precludes the INS from issuing a visa pursuant to the DV Program for a given fiscal year upon expiration of that fiscal year. See *Nyaga*, F.3d at 914; *Iddir v INS*, 301 F.3d 492, 501 (7th Cir. 2002).[8]

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[8] Had Coraggioso sought relief prior to expiration of the 1998 fiscal year, our analysis may have been different. See *Paunescu v INS*, 76 F. Supp. 2d 896 (N.D. Ill. 1999). Similar to Coraggioso's parents Paunescu was a lottery winner for the fiscal year 1998 DV Program. But unlike Coraggioso's parents, Paunescu filed a complaint for mandamus and declaratory judgment against the INS on September 23, 1998. After a hearing on September 25, 1998, the District Court ordered the INS to "complete adjudication of the applications for adjustment status" for Paunescu and his wife without delay, or by no later than September 30, 1998. *Id.*. at 898. Despite the court order, Paunescu's application was not adjudicated in time. In that instance, and despite the expiration of the fiscal year, the District Court ordered "defendants to process plaintiffs'

IV.

We conclude with regret that Coraggioso's petition for review must be denied, thus affirming his order of removal. The equities of the situation clearly give us pause. Having lived in the United States since the age of four, Coraggioso is more truly an American than an Italian. He is neither a criminal nor a burden on society. In addition, it appears Coraggioso would have been entitled to a diversity visa (and, hence, permanent resident status) if the INS had performed its statutorily mandated duty and timely adjudicated his parents' DV Program application. Now that he is over twenty-one years old, however, Coraggioso is no longer a "child" under the INA and cannot obtain relief through his parents. 8 U.S.C. § 1101(b)(1), (c). Therefore, it appears the only redress currently available is a private bill directing the INS to grant a visa number to him. See *e.g.*, H.R. 4863, 107 Cong. (2002) ("For the relief of Rodney Allan Green and Wendy Sharon Green"); H.R. 4829, 107th Cong. (2002) ("For the relief of Olivera Goronja"). Absent such relief, Coraggioso well be forced to leave behind his family, friends and the only life he can remember.

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applications and to grant plaintiffs all relief *to which they would have been entitled had defendants processed their application in a timely fashion.*" *Id.* at 903 (emphasis added). The Seventh Circuit has explicitly approved this result.

> It would be a different case had the district court ordered the INS to adjudicate the appellants' status *while* the INS maintained the statutory authority to issue the visas. In such a situation, the INS would be on notice to reserve visas and must complete the task, as ordered, before time expires. Allowing the INS to claim inability to issue visas at that point would impinge the authority of the court.

Iddir, 301 F.3d at 501 n.2 (discussing and citing Paunescu)(emphasis in original)(internal citations omitted).

A True Copy:
Teste:

Clerk of the United States Court of Appeals
For the Third Circuit

JOHN D. PEREZ, ESQUIRE
JOHN D. PEREZ, P.C.
838 BROAD STREET
NEWARK, NEW JERSEY 07102

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SALVATORE CORAGGIOSO,
File No. A77 035 208
Newark Office

Petitioner,

v.

PETITION FOR REVIEW INS ORDER

BOARD OF IMMIGRATION APPEALS, AND IMMIGRATION AND NATURALIZATION (INS) DISTRICT DIRECTOR,

Respondents.

Salvatore Coraggioso hereby petitions the court for review of the Order of the Board of Immigration Appeals (Board) entered on December 10, 2002 affirming, without opinion, the decision below. (A copy of the Board's Order is attached hereto as Exhibit A). The Immigration Judge denied petitioner's motion to terminate proceedings and entered an order of removal on September 14, 2000. (A copy of the Order and Oral Decision of the Judge are attached hereto as Exhibits B and C respectively). The petitioner timely appealed to the Board, with the decision being only recently rendered on December 10, 2002.

Petitioner is a 23 year old native of Italy who entered the United states with his parents on June 13, 1984 as a 4 year old child. The petitioner has remained continuously in this country and is now fully assimilated into the American culture, having resided in the United States for all but four

years of his life. The petitioner completed his education, maintained employment, and has had no contact with the criminal justice system. The petitioner continues to reside with his parents and citizen born sister, maintaining a close and loving family relationship.

The petitioner was included on the 1998 Diversity Lottery and adjustment of status applications submitted by his parents as the family had been notified that they were winners of the 1998 DV Program. The family submitted all applications and filing fees in a timely manner and proof was presented that all filing fees, tendered in the form of money orders, were deposited by the Immigration and Naturalization Service. The petitioner and his parents were awaiting final clearance when they were in receipt of correspondence from the District Director, dated January 28, 1999, advising that they were no longer eligible to receive a visa. The petitioner was served with a Notice to Appear on August 10. 1999 and was charged with being subject to removal as being present in the United States without being admitted or paroled pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act. On September 14, 2000, the Immigration Judge denied petitioner's motion to terminate proceedings and entered an order of removal to Italy.

The petitioner maintains that the lack of timely adjudication by the Immigration and Naturalization Service was an affirmative act of misconduct resulting in an order of removal against the petitioner. The petitioner contends all applications were submitted in accordance with the statutory requirements and he was now penalized due to the inaction of the Service to adjudicate the application within the fiscal year. During proceedings the Assistant District Counsel could not dispute the facts of petitioner's claim nor could he dispute that there were no visa numbers available at that time. The petitioner maintains the Judge erred in denying the motion to terminate proceedings as the INS may be estopped

from denying an application for adjustment of status if it engages in affirmative misconduct. The petitioner requested that the Court issue a directive ordering the Service to procure visa numbers for petitioner and his family. The Court declined but acknowledged that the facts of petitioner's case were unclear. In the alternative, petitioner maintains he should have been provided an opportunity to apply for cancellation of removal pursuant to section 240A(b) of the Act through his parents and United States citizen born 16 year old sister.

Petitioner seeks relief from said Order due to initial error by the Immigration Judge, compounded by the affirmation of the Board of Immigration Appeals. Petitioner respectfully petitions this court and seek to offer proofs of eligibility for the requested relief as expressed herein.

Respectfully submitted,

s/ John D. Perez, Esquire
John D. Perez, Esquire
Attorney for Petitioner
838 Broad Street,
Newark, New Jersey 07102

SERVICE LIST

Provided below is the list of respondents so named in the enclosed Petition for Review of INS Order pertaining to Salvatore Coraggioso and upon shom the court will effectuate proper service:

Office of Immigration Litigation
Civil Division
United States Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

John Ashcroft, Attorney General
Civil Division, Appellate Staff
10th and Pennsylvania Avenue N.W.
Room 3617 MAIN
Washington, D.C. 20530

Andrea J. Quarantillo, District Director
Innigration and Naturalization Service
970 Broad Street, 14th Floor
Newark, New Jersey 07102

Dated: January 8, 2003

s/John D. Perez, Esquire
John D. Perez, Esquire
Attorney for Petitioner

Executive Office Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Perez, John D., Esquire
838 Broad Street,
Newark, NJ 07102-0000

Office of the District Counsel/NE
P.O. Box 1085
Newark, NJ 07101-1085

Name: CORAGGIOSO, SALVATO A77-035-208

Date of this notice: 12/10/2002

Enclosed is a copy of Board's decision and order in the above-referenced case.

Sincerely,

s/Jeffrey Fratter
Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:
BUENDELSBERGER, JOHN

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board
of Immigration Appeals

File: A77-035-208-Newark

Date: DEC 10 2002

In re: CORAGGIOSO, SALVATO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Perez, John D., Esquire

ON BEHALF OF SERVICE: Charles Parker, Jr., District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

s/John Guendelsberger
FOR THE BOARD

IMMIGRATION COURT
970 BROAD STREET, ROOM 1135
NEWARK, NJ 07102

In the Matter of

Case No.:A77-035-208

CORAGGIOSO, SALVATO
Respondent

IN REMOVAL
PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Sep 14, 2002. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to **ITALY** or in the alternative to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to alternative to

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $_____ with an alternate order of removal to

[ ] Respondent's application for asylum was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(i) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section_____ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for adjustment of status under section_____ of the INA ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a ___ _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: **MOTION TO TERMINATE-DENIED.**

Date: Sep 14, 2000

Appeal: Waived/(Reserved) Appeal Due By:

Appeal due within
30 day
Reserved by Respondent

s/ Eugene Pugliese
EUGENE PUGLIESE
Immigration Judge

LME

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE ORRICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Newark, New Jersey

File No.: A 77 035 208 September 14, 2000

In the Matter of

SALVATO CORAGGIOSO,)
) IN REMOVAL
Respondent) PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration And Nationality Act – present without Proper admission

APPLICATION: Termination

ON BEHALF OF RESPONDENT:
John D. Perez, Esquire

ON BEHALF OF SERVICE:
Leo A. Finston, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The Respondent is a 20-year-old single male and native and citizen of Italy.

The Notice to Appear is dated August 10, 1999. It is marked as Exhibit 1. It alleges that the Respondent entered the United States through New York on June 13th 1984 and it alleges that he was not properly admitted or paroled at that time by an immigration officer. Accordinly, he was charged with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

ALS

At a master calendar hearing on November 18th 1999, The Respondent, through counsel, admitted the allegations and conceded removability. On that basis, his removability was established by clear and convincing evidence.

The Respondent has asked this Court to terminate his pending Notice to Appear and he asked that that be done because according to the Respondent, by way of a letter brief dated September 6th 2000, which is also in the record, and by way of certain proffers that have been made by counsel for the Respondent orally, he is alleging that he was notified of his selection under the Diversity Visa Lottery Program of 1998 as a winning applicant and he complied, according to the Respondent, with the requirements, all requirements of the lottery and was awaiting future instruction from the Immigration Service when he was advised, again this is all according to the Respondent, that he had been denied ultimately the visa because the Service no longer had any visas that were available to him. They had then moved into the new fiscal year. So, the order of denial was, again allegedly, dated January 28th 1999, which of course would be fiscal year 1999. Anyway, the Respondent has had this case pending in front of this court for just about one year. We have given the Respondent an opportunity to go try to Get this matter straightened out somehow with the Immigration and Naturalization Service, if it's possible to to straighten it out. Counsel for the Respondent has been working on this case and trying to get some relief from the Immigration Service.

The reason the Respondent is trying to get some relief from the Immigration Service is because the Respondent, and specifically Respondent's counsel, knows

ALS

that this court has no authority to provide anyone with adjustment of status unless there is an approved visa petition or some other proof the individual is eligible for an immigrant visa and that visa is immediately available. Obviously, in this case, there is no such proof. The Respondent hasn't supplied any because his point is exactly that he was denied that opportunity and he was denied it, according to the Respondent, through no fault of his own, because he had done everything that he was supposed to do, but according to the Respondent, the Service was tardy in getting its papers together and getting its notices together and because of that, time passed, the fiscal year ended and the Respondent wound up with nothing.

This court has no way of knowing what facts in this case are the correct facts and what exactly happened down-stairs with the Immigration and Naturalization Service on their third floor office, but in a sense, it's irrelevant, because there's simply no visa available here for him and he has no other applications pending. He is not eligible for cancellation because he doesn't have any qualifying relative and there's nothing else he seems to be eligible for. He's not married, so he has not citizen or, for that matter, permanent resident spouse. So, there' really nothing here for the Respondent.

The Respondent has not applied for voluntary Departure. He has applied, in fact, for relief other than the termination and the motion to terminate, of course, is going to be and is, denied.

For the foregoing reasons, the Court is entering the following order.

A 77 035 208 September 14, 2000

ALS

ORDER

The Respondent's motion to terminate is denied.

FURTHER ORDERED

The Respondent is to be removed from the United States to Italy pursuant to the charge in the charging document.

EUGENE PUGLIESE
Immigration Judge

A 77 035 208 September 14, 2000

CERTIFICATE PAGE

I hereby certify that the attached proceeding before EUGENE PUBLIESE in the matter of:

SALVATO CORAGGIOSO

A 77 035 208

Newark, New Jersey

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

s/Ann L. Shebovsky
Ann L. Shebovsky
(Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

February 27, 2001
(Completion Date)

U.S. Department of Justice
Immigration and Naturalization
Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A77 035 208

In the Matter of:
Respondent: Salvato Coraggioso
1041 East 23rd Street, 2nd Fl
Paterson, NJ 07513
(Number, street, city, state and ZIP code) (Area code & phone #)

[ ] 1. You are an arriving alien.
[X] 2. You are an alien present in the United States who has not been admitted or paroled.
[ ] 3. You have been admitted to the United States, but are deportable for the reasons state below.

The Service alleges that you:

1. Are not a citizen or national of the United States;
2. You are a native of **Italy** and a citizen of **Italy** ;
3. you entered the United States at or near **New York, New York** on or about **June 13, 1984** ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

[ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

[ ] Section 235(b)(1) order was vacated pursuant to:
[ ] 8 CFR 208.30(f)(2) [ ] 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration Judge of the United States Department of Justice at:
970 Broad Street, Room 1135 Newark, NJ 07102
(Complete Address of Immigration Court, Including Room #, if any)
on to be set at to be set to show why you should not be
(Date) (Time)
removed from the United States based on the charge(s) set forth above.

DADD, Examinations
(Signature and Title of Issuing Officer)

Date: AUG 10 1999

Newark, NJ
(City and State)

See reverse for important information

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear Served upon you is evidence of your alien registration while You are under removal proceedings. You are required to Carry it with you at all times.

Representation: If you so choose, you may be represented In this proceeding, at no expense to the Government, by an Attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of an witness considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on you own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence

and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be ~~mailed to~~ this address. If you do Not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

_____ Date:_____
(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on **AUG 10 1999**, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

[ ] in person

[X] by certified mail, return receipt requested

[ ] by regular mail

[X] Attached is a list of organizations and attorneys which provide free legal services.

[ ] The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

s/Kimberly Zanotti, SDAO
(Signature and Title of Officer)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
970 BROAD STREET, NEWARK, N.J. 07102

A77 035 208

Salvato Coraggioso
1041 East 23rd Street, 2nd
Paterson, NJ 07513

January 28, 1999

DECISION ON APPLICATION FOR STATUS AS PERMANENT RESIDENT

Upon consideration, it is ordered that your application for status as a permanent resident be denied for the following reason(s):

SEE ATTACHMENT

If you fail t depart from the United States, proceedings will be instituted to enforce your departure. You may renew your application for status as a permanent resident during such proceedings.

Sincerely Yours,
s/Andrea J. Quarantillo
Andrea J. Quarantillo
District Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The record indicates that you have filed for adjustment of status as a derivative family member based upon the fiscal 1998 Diversity Lottery program.

Section 245 of the Immigration and Nationality Act states:

"(a) the status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General,...if (3) an immigrant visa is available to him at the time the application is filed."

Section 204(a)(1)(G)(ii)(II) of the Act states:

"Aliens who qualify, through random selection, for a visa under section 203(c) (Diversity Immigrants) shall remain eligible to receive such visa only through the end of the fiscal year for which they were selected."

The fiscal 1998 Diversity Lottery program ended on September 30, 1998. Therefore, in accordance with the above section of the Immigration and Nationality Act, you are no longer eligible to receive a visa.

Based on the foregoing, you are statutorily ineligible to adjust your status under the provision of the 1998 Diversity Lottery program.

Your application is hereby denied.